IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 727 OF 2004

Shrui Dnyaneshwar Pandurang Bhinge ..Appellant

Versus

1.Narayan Babu Kumbhar & Ors. ..Respondents

Shri M.R.Katikar for Appellant

CORAM : P.V.KAKADE, J.

DATE : 8TH SEPTEMBER, 2004.

P.C.:

1. This is an appeal preferred by the appellant-plaintiff against the Judgment and Order passed by District Judge, Sangli dated 17th December, 2004 in Regular Civil Appeal NO.92 of 2001 dismissing the appeal and confirming the Order of dismissal of the Plaintiff’s suit passed by Civil Judge, Jr.Division,

Atapadi in Regular Civil Suit No.30 of 1996.

2. I heard Mr. Katikar the learned counsel for the Appellant. Perused the record.

. It appears from the record that Appellant-Plaintiff is the owner and possessor of a house property bearing City Survey No.555 at Atpadi. On the north side of the property of the Appellant, the property bearing City Survey Nos.557, 558 and 559 belonging to the Respondents are located. The C.T.S. Office has made survey of the suit property. In the year 1996 Respondents put up five water spouts in the southern wall of their property. The appellant complained about putting the spouts to the police and also filed Regular Civil Suit No.30 of 1996 for declaration that the Respondents have no easementary right in the Appellant’s property and also for mandatory injunction and consequential relief to withdraw the construction carried out by the Respondents. The Respondents filed their written statement denying the entire claim of the Appellant. Thereafter the suit was adjudicated on merits and was dismissed by the Civil Court holding that there was no obstruction in

possession of the plaintiff caused by the defendants. It was also held that the defendants had easementary right to maintain water spouts on the south side of their property Survey Nos.557 and 558 and as such suit came to be dismissed.

. The Appellant preferred an appeal before the District Court and after hearing both the sides the appeal came to be dismissed. Hence the present Appeal.

3. At the outset it may be noted that there are concurrent findings recorded by both the lower courts to the effect that the plaintiff has no subsisting right to seek declaration in the manner in which it is sought, and on so called mandatory injunction as a consequential relief because it was found that the defendants had in fact easementary right to maintain water spouts of their property. The learned District Judge has also concluded that the appellant was not entitled to seek negative declaration and his case did not fall within the discretionary jurisdiction contemplated under Section 34 of the Specific Relief Act. I have categorically perused the findings recorded by both the courts below and come to the conclusion that there is absolutely no

substantial question of law involved in the present appeal.

4. In the case of Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and Ors. AIR 1999 Supreme Court 2213 the Apex Court has categorically held that the conditions mentioned in Section 100 must be strictly fulfilled before a second appeal can be maintained and no court has the power to add to or enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this section. The substantial question of law has to be distinguished from a substantial question of fact. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible.

. Therefore, if we keep in mind this principle

laid down by the apex court and after perusal of the entire factual matrix of the dispute vis-a-vis the relevant legal provision, I am satisfied that there is absolutely no questions of law involved in this appeal and hence it is liable to be dismissed in limine.

. In the result the appeal stands dismissed in limine with no order as to costs.

. Certified copy expedited.